

Janice Staloski, Director  
 Bureau of Community Program Licensure  
 and Certification  
 Department of Health  
 132 Kline Plaza, Suite A  
 Harrisburg, PA 17104

January 11, 2008

INDEPENDENT REGULATORY  
 REVIEW COMMISSION

2008 JAN 14 AM 8:50

RECEIVED

Dear Janice Staloski,

I am writing to express my opposition to the Department of Health's Proposed Regulation No. 10-186 regarding confidentiality of drug and alcohol addiction treatment patient records and information.

The current regulation – 4 PA Code Section 255.5(b) – does an excellent and important job of protecting the privacy of frightened families seeking help for loved ones.

The new proposed regulation before you will eviscerate the protections of 4 PA Code Section 255.5(b) and allow third-party payers, insurers and government access to personally intrusive and quite private information.

Until recently, I was a member of the Pennsylvania Advisory Council on Drug and Alcohol Abuse, established by the Pennsylvania Drug and Alcohol Abuse Control Act of 1972. This law establishes the Pennsylvania Advisory Council on Drug and Alcohol Abuse and imposes duties on the Department of Health to develop and coordinate a plan for the prevention and treatment of alcohol and drug abuse and addiction:

Under the statute, Act 63 of 1972, Section 3,(e) provides that "The Department of Health shall seek the written advice and consultation of the council in the following areas: . . ." One of the areas specified in Section 3,(e)(2) is "The promulgation by the Department of Health of any regulations necessary to carry out the purpose of this act." (Emphasis added)

In January 2007, we became aware that the Department of Health – without seeking "the written advice and consultation of the council" – was proposing to change 4 PA Code Section 255.5(b). At both the 1/25/07 and 4/11/07 meetings of the Advisory Council, we voted not once, but twice to oppose any changes to 4 PA Code Section 255.5(b) and directed that a letter be sent to the Secretary of Health, the Governor, the House Health and

Human Services Committee, the Senate Public Health and Welfare Committee and the Independent Regulatory Review Commission reflecting these motions.

The Department of Health never sought our written advice, nor did they carry through on our direction as the Advisory Council to notify the Legislature, the Independent Regulatory Review Commission and others.

As a former state Representative for the 103<sup>rd</sup> district, drug and alcohol addiction and prevention issues were a major focus of my legislative career. For many years, I worked to secure passage of Act 106 of 1989 (originally Act 64 of 1986), requiring group health plans to provide treatment for addiction. This life-saving, commercial health insurance law provides treatment for over 15,000 citizens of this Commonwealth each and every year.

Act 106 of 1989 clearly defines how treatment for addiction is to be accessed. Nonetheless, in the early 1990's managed care and group health insurers set up an obstacle course of denial including pre-authorization, serial pre-certification and other methods to block access to treatment.

On 8/8/03, the PA Insurance Department issued *Notice 2003-06, "Drug and Alcohol Use and Dependency Coverage"*, regarding Act 106 of 1989. According to the Notice:

**... the only lawful prerequisite before an insured obtains nonhospital residential and outpatient coverage for alcohol and drug dependency treatment is a certification and referral from a licensed physician or licensed psychologist.**  
(Emphasis added)

In January of 2004, the insurers challenged the Insurance Department's Notice in Commonwealth Court. The Insurance Department and the Office of the Attorney General joined together to argue the case before the Court. In addition, Amicus briefs were filed in support of Act 106 of 1989 and the Insurance Department by the Pennsylvania District Attorneys Association and separately, by the County Commissioners Association of Pennsylvania, the Pennsylvania Association of Drug and Alcohol Administrators, the Pennsylvania Children and Youth Administrators, the Pennsylvania Council of Chief Juvenile Probation Officers and the Pennsylvania Association of Student Assistance Professionals.

On 7/26/07, the PA Commonwealth Court upheld the Insurance Department by a 7-0 ruling stating in part:

*"Based on its analysis of the issues and the law, the Court concludes that the Department's position in this matter is correct, and it therefore declares that Act 106 requires group health insurers to provide mandatory coverage for alcohol and drug abuse treatment once an insured receives a certification and a referral for treatment from a licensed physician and/or a licensed psychologist. Accordingly, the Court holds that the Department is entitled to judgment on the pleadings as a matter of law." (Emphasis added)*

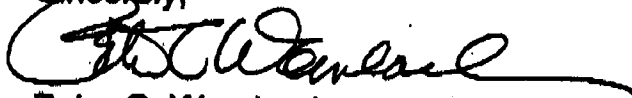
The decision of the Commonwealth Court is now under appeal by the insurers to the Pennsylvania Supreme Court.

Because of the pending court action, consideration of Proposed Regulation No. 10-186 is highly inflammatory and very inappropriate. Frankly, I see it as an attempt by the insurers to inappropriately use the Department of Health and to short circuit the court process.

In closing, people with addictions and their suffering families must feel safe to begin the recovery journey – a journey that heals families and brings with it enormous cost savings to the Commonwealth in reductions in spending on health care and crime.

The Department of Health Proposed Regulation No. 10-186 is an outrageous infringement on the privacy of our state's suffering families and will do damage Pennsylvania's efforts to address the burgeoning drug and alcohol problem.

Sincerely,



Peter C. Wambach  
143 Wyndham Way  
Harrisburg, PA 17109

cc: Governor Ed Rendell  
Gregory Fajt, Chief of Staff  
Secretary Calvin Johnson, Department of Health  
Independent Regulatory Review Commission  
Senate Public Health and Welfare Committee Members  
House Health and Human Services Committee Members  
Representative Gene DiGirolamo

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**Peter C. Wambach**  
**143 Wyndham Way**  
**Harrisburg, PA 17109**

**COPY OF COMMENT LETTER RE: DEPARTMENT OF  
HEALTH PROPOSED REGULATION NO. 10-186**

**To: SCOTT SCHALLES**

**From: Peter Wambach**

**DATE: 1/14/08**

**Pages: 4 (Incl. Cover)**

**Re:** .....

**CC:** .....

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